

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
)  
Federal-State Joint Board on )  
Universal Service )  
)

CS Docket No. 96-45

To: The Commission

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**COMMENTS OF INDEPENDENT CABLE &  
TELECOMMUNICATIONS ASSOCIATION**

The Independent Cable & Telecommunications Association ("ICTA"), by its attorneys, submits these comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding. The members of ICTA operate private cable and telecommunications systems providing video programming and shared tenant telecommunications services ("STS") to residents of multiple dwelling units ("MDUs") throughout the United States.

**DISCUSSION**

In the NPRM, the Commission seeks comment on a wide variety of issues related to the implementation of new Sections 254 and 214(e) of the Communications Act, added by the Telecommunications Act of 1996. The manner in which these sections are implemented may have a significant impact on the future business plans of ICTA's members.

ICTA's members provide telephone services primarily on a private carriage basis through STS systems. In some cases, however, ICTA member systems are expanding toward the point at which it will be cost and service effective for the operators of these systems to install their own dedicated switch to integrate MDU systems in geographic clusters and to provide, for several MDUs, a single interconnection point with the incumbent local exchange carrier ("LEC"). If, at that point, these operators were deemed to be "telecommunications carrier[s],"<sup>1/</sup> despite the fact

<sup>1/</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) § 3(a)(49), (51) (A "telecommunications carrier" means any provider of telecommunications services.... 'telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of

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that they would continue to serve only residents of MDUs with which the operator has access and service agreements, it would be possible that a state may, “upon its own motion,” designate the operator to be an “eligible telecommunications carrier” and impose upon it universal service obligations.<sup>2/</sup> Naturally, because of the facilities and architecture of these telephone systems, which remain essentially STS systems, it would be impossible for these operators to meet universal service obligations to schools, hospitals, or any other consumer who was not a resident of an MDU at which the operator provides service.

Consequently, ICTA urges the Commission to establish a federal definition, for universal service purposes at least, of “telecommunications carriers” that would exclude entities providing STS services to MDUs, regardless of the facilities used to provide those services. In order to be consistent with the statutory language, the Commission’s definition should provide that entities providing telecommunications solely to residents of MDUs, pursuant to specific access or service agreements with such MDUs, shall not be deemed to be providing telecommunications to “such classes of users as to be effectively available directly to the public.”

Such a definition would be consistent with the Commission’s prior policies regarding STS. The status of an STS provider never, from the Commission’s viewpoint, has been a function of the technology used to provide shared tenant services.<sup>3/</sup> Similarly, the Commission long has recognized that STS may be provided on a private carriage basis.<sup>4/</sup> There is no reason, therefore, that STS systems should be reclassified and required to provide universal service (as common carriers) simply by virtue of a change in the facilities used to provide the STS services.

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the facilities used.”).

<sup>2/</sup> Telecommunications Act of 1996, § 102(a)(2).

<sup>3/</sup> See In re: Policies Governing the Provision of Shared Telecommunications Services, 3 FCC Rcd 6931 (1988) (describing STS systems that use an “unpartitioned switch”); see also In re: IBM request for Ruling re State Regulation of Shared Telecommunications Services Systems, File No. ENF-85-45, Memorandum Opinion and Order (rel. Jan. 27, 1986) (“In an unpartitioned configuration, the STS system aggregates the local service needs of all system users and connects the STS switch to the LEC’s CO with the minimum number of lines required to meet overall system requirements. In addition, all calling among STS users would be switched through the STS switch and not the LEC CO.”).

<sup>4/</sup> See, e.g., Telecommunications Access Provider Survey, PN, CCB-IAD-950119 (rel. Nov. 3, 1995) ¶ 6.

Although the Commission previously has deferred preemptive action in this area, the “stakes,” as it were, have been raised by the 1996 Act. ICTA’s member STS systems are providing valuable competitive choices to consumers in markets that traditionally have been dominated by the lone local exchange carrier. STS systems, however, have nothing approaching the facilities of a traditional LEC system such that they would be capable of providing the universal service features identified in the NPRM to consumers not residing in one of the STS providers’ MDUs. Where an STS system is located in an area served by an “incumbent LEC,”<sup>5/</sup> therefore, it is far more reasonable to require the incumbent LEC to provide universal service and for it to receive the subsidies available for providing that service. Indeed, the imposition of universal service obligations on STS providers would likely either drive them from the market or force them to configure their systems in an inefficient manner in order to avoid reclassification as “eligible telecommunications carriers.” Neither result would serve the public interest.

### CONCLUSION

In conclusion, whether or not STS providers expand their facilities to include remote switches, they cannot reasonably be required to provide service on demand outside of the MDUs to which they have access. ICTA urges, therefore, that the Commission adopt in this proceeding specific federal limitations, at least for universal service purposes, on the definition of a “telecommunications carrier” that would exclude STS providers, whatever the technology employed by STS providers to deliver services to their customers.

Respectfully submitted,

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<sup>5/</sup> See new Section 251(h).